IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2864 OF 1999

G. Subbiah)
Working as Senior Stenographer in)
General Manager's office, Mumbai and)
residing at 59/A, Elavia Building)
Matunga Road (W.R.), Mumbai 400 016.).. PETITIONER

VERSUS

1) Union of India)
through the General Manager)
Central Railway)
Mumbai C.S.T.)

2) Chief Personnel Officer)
Central Railway)
Mumbai C.S.T.).. RESPONDENTS

Mr.G.K.Masand for the Petitioner.

Mr.A.N.Samant for the Respondents absent.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 22ND FEBRUARY 2005

JUDGMENT : (PER MHATRE, J.)

. By this Petition, the Petitioner challenges the judgment and order of the Central Administrative Tribunal in Original Application No.82 of 1997 in Review Petition No.57 of 1998. The Petitioner had sought a declaration that he was entitled to be considered to the post of Assistant Personnel Officer after he was duly selected in the selection held in 1994.

2. A few facts which are necessary to be noticed while deciding the present Petition are as follows :-

. The Petitioner was appointed as a Junior Stenographer with the Western Railway on 19th October 1981. He was promoted to the post of Senior Stenographer in the grade of 1400-2600 (RPS) as he possessed the requisite qualifications including a speed of 100 W.P.M. in stenography. His appointment to the post of Senior Stenographer was in a clear and unfortuitous vacancy. However, his promotion to this post on 6th February 1986 was treated as an ad hoc appointment. 11 posts of Assistant Personnel Officer fell vacant and the Respondents invited applications from eligible staff to fill in the vacancies by appearing for the limited departmental competitive examination. The eligibility criterion was that the employees who were regularly promoted in the grade of 1400-2600 or in a higher grade could apply, provided they had completed five years of non-fortuitous service in that grade. The Petitioner being eligible to apply since he was appointed in a clear and non-fortuitous vacancy in the post of Senior Stenographer on 6th February 1986, applied for the post of Assistant Personnel Officer. Although, initially the Petitioner was not permitted to appear for the written test, the Petitioner was found eligible and was listed at Sr.No.13 in the list of candidates eligible to appear for the written test to be held on 23rd April 1994. On 31st May 1994, the Petitioner was informed that on scrutiny of

the service registers, he was ineligible to appear for the written test to be held on 25th June 1994 as he was posted to the Junior Stenographer's grade on ad hoc basis only with effect from 8th March 1991 and had, therefore, not completed five years of non-fortuitous service. On a representation being made, the Petitioner was permitted to appear for the examination.

3. An Original Application No.743 of 1994 was filed before the Central Administrative Tribunal by one Y.P.Desai who was not in the panel of eligible candidates notified on 29th December 1994. Interim orders were issued to the effect that out of the 8 vacancies, only 7 could be filled in and the 8th post was to be kept vacant for Y.P. Desai. The Petitioner was the 8th person in the panel and would have been appointed as an Assistant Personnel Officer, had the interim orders not been passed by the Central Administrative Tribunal. It appears that Y.P.Desai failed in the written test and was, therefore, not called for the viva-voce. The Original Application filed by him was dismissed on 16th December 1996 and the interim orders were vacated.

4. The Petitioner, therefore, expected that he would be appointed as an Assistant Personnel Officer being 8th in the list. However, he was informed by letter dated 1st January 1997 that his seniority was wrongly fixed and that since he was appointed on a

regular basis as Senior Stenographer only with effect from 8th March 1991, he was not eligible to be considered for the selection to the post of Assistant Personnel Officer. A representation made by the Petitioner pointing out that he had been working in a clear and non-fortuitous vacancy with effect from 8th February 1986 and had thus completed eight years in the grade of Senior Stenographer, was not heeded. The Petitioner, therefore, filed Original Application No.82 of 1997 which was dismissed by the Central Administrative Tribunal on 22nd September 1998 by coming to the conclusion that the Petitioner did not qualify for the post of Assistant Personnel Officer as he had not completed the minimum period of five years of service in the Senior Stenographer's grade and, therefore, was ineligible to apply for the post. On 15th October 1998, a Review Petition was filed by the Petitioner on the ground that the provisions of paragraph 320 of the Indian Railway Establishment Manual, on which the Tribunal had relied on while dismissing the Original Application, was not relevant and that instead the provisions of paragraph 215(a) of the Indian Railway Establishment Manual were applicable. This Review Petition came to be rejected on 26th October 1998. Hence, the present Petition.

5. The main contention raised on behalf of the Petitioner is that he was eligible to apply for the post of Assistant Personnel Officer since he had completed

five years of service from 1986 in this post. It was submitted on behalf of the Petitioner that although he had been considered to be an ad hoc appointee to the post of Senior Stenographer and was regularised in service with effect from 8th March 1991, the entire period from 6th February 1986 was required to be considered. If this period is considered, the Petitioner would have completed five years of service in the scale of 1400-2600 and, therefore, was eligible to apply to the promotional post of Assistant Personnel Officer. Reliance is placed on the judgment of the Apex Court in the case of *Direct Recruit Class II Engineering Officers' Association* vs. *State of Maharashtra and others*, **(1990) 2 SCC 715**.

6. The Apex Court in this judgment has held that once an incumbent is appointed to the post according to the Rules applicable, his seniority is to be counted from the date of his appointment and not according to the date of his confirmation. If the ad hoc appointment is not according to the Rules and is made only as a stop-gap arrangement, the officiation in such post cannot be considered for reckoning for the seniority. However, the Supreme Court has also observed that where the initial appointment may not be made by following the procedure laid down by the Rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service is to be

considered for fixing the seniority.

7. In the present case, there is no dispute that the Petitioner was appointed to the post of Senior Stenographer with effect from 6th February 1986 and he was entitled to draw salary in the grade of 1400-2600. That the Petitioner had worked in this grade continuously for eight years is not controverted. Therefore, following the judgment of the Apex Court in *Direct Recruit Class II Engineering Officers' Association* (supra), the Petitioner would be entitled to be considered for promotion to the post of Assistant Personnel Officer. The Petitioner was empanelled in the list of successful candidates at Sr.No.8. It was only because of the fortuitous circumstance of the Central Administrative Tribunal passing interim orders in Original Application No.743 of 1994 that the Petitioner was not appointed as an Assistant Personnel Officer. In our view, therefore, the order dated 22nd September 1998 of the Central Administrative Tribunal, impugned in this Petition, suffers from illegalities and is required to be set aside. The Petitioner would thus be entitled to be appointed against the vacancy to the post of Assistant Personnel Officer.

8. Writ Petition allowed. Rule made absolute accordingly. No order as to costs.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)